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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,946	04/13/2004	Curtis E. Jutzi	42P18836	5446

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EXAMINER	
GRAHAM, PAUL J	

ART UNIT	PAPER NUMBER
2623	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/823,946	JUTZI, CURTIS E.	
	Examiner	Art Unit	
	Paul J. Graham	2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 February 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-18* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-18* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *13 April 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant argues:
Arad does not teach or suggest the claimed invention.

The Examiner respectfully disagrees. Instant application claim 1 and similar claims read: "if a tuner is not available for the television"; for the television to view through a VCR tuner or program on same, the cable-in channel must be tuned. In this scenario it is not, it is not made available until the programming requested is tuned by the STB, this is done once the STB has determined that a program channel has been requested. Once determined which channel is requested (via a comparison of channel signatures and return loss ratios), that channel is made available for recording or display by the STB (see Arad, [0009]).

When tuner is not available to TV, the last viewed channel is determined by a comparison of the channel signatures to a current return loss ratio. That signature with the least difference represents that channel last viewed and needs to be tuned to by the STB in order to transmit programming for recording or displaying.

Reading the claims in the broadest sense, Arad does suggest and teach receiving indication of last channel and changing the television to the cable channel automatically, if a tuner is not available for the television. Applicant is reminded that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988, F.2d 1181,26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant's arguments have been fully considered, but are not persuasive. It is noted in the Conclusion that other prior art reads on these claims as well. Necessitated by amendment, further reading of Arad shows that claims 1-18 stand rejected.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness

rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Arad et al. (US 2005/0081245 A1) in view of Beckmann et al. (US 6675388 B1).

As to claim 1, Arad discloses a method comprising:

determining a last channel a television was tuned to prior to being turned off (see Arad [0089] channel signature data is available for recall "at any particular time" to determine last channel tuned);

determining whether the last channel is a radio frequency remodulated (RF-remodulated) channel (see Arad, [006,0009, 0010, 0075] for RF remodulated channel, if the tuner is on line (as in [0091]) then it has been determined to be an RF remodulated channel);

if the last channel is a RF-remodulated channel, then sending a signal to indicate that the television is on line with the RF-remodulated channel (see Arad [0091] TV is on line once it has been tuned);

and changing the television to the cable channel (see Arad [0091] for changing the TV and it is to the cable given that alignment between STB and TV has been established (i.e., "on line" from above));

if a tuner is not available for the television, then receiving an indication of a cable channel that was last RF-remodulated to the RF-remodulated channel for the television (see Arad [0081] for indication of channel remod, "based upon detected channel");

Arad suggests a method for tuning a specific channel for a television if a tuner is not available (e.g., turned off) (see Arad, [0008]) and Arad teaches automatically changing the television to the cable channel to satisfy expectations of a user when the tuner is not available for the television, (for the television to view through a VCR tuner or program on same, the cable-in channel must be tuned. In this scenario it is not, it is not made available until the programming requested is tuned by the STB, this is done once the STB has determined that a program channel has been requested. Once determined which channel is requested (via a comparison of channel signatures and return loss ratios), that channel is made available for recording or display by the STB (see Arad, [0009]). When tuner is not available to TV, the last viewed channel is determined by a comparison of the channel signatures to a current return loss ratio. That signature with the least difference represents that channel last viewed and needs to be tuned to by the STB in order to transmit programming for recording or displaying.)

however, Arad does not expressly teach multiple tuners in a STB. Beckmann, who discloses a data distribution system does teach multiple tuners in a STB available for downstream presentation devices (such as a television) (see Beckmann, fig. 3 and col. 4, ll. 10-15).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the method of Arad with the system of Beckmann so that multiple channels could be tuned to simultaneously (see Beckmann, col. 2, ll. 35-43).

4. Claims 4, 7, 10, 13, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arad et al. (US 2005/0081245 A1) in view of Beckmann et al. (US 6675388 B1) in further view of Itoh et al. (US 2004/0068737 A1).

As to claim 4, claim 4 is similar to claim 1 except that a remote control is recited. Therefore, claim 4 is analyzed similarly to claim 1 except for the remote control discussed below.

Arad does disclose a remote control (see Arad [0079 & 0089]); however, it may not explicitly show all the functionality that is recited in claim 4. Itoh, who discloses a method of TV channel selection, does teach a remote control unit that shows that functionality (see Itoh, [0009 & 0022]).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the method of Arad with the method of Itoh so that the channel alignment changes could be made remotely (see Itoh, [0009]).

As to claims 7, 10, 13, and 16, claim 7 recites a system, claims 10 and 13 recite a computer-readable medium and claim 16 recites an apparatus, but each are similar to claim 4 (and therefore claim 1) and are analyzed similarly to claim 4 (and claim 1) (see above).

5. Claims 2-3, 5-6, 8-9, 11-12, 14-15, 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arad et al. (US 2005/0081245 A1) in view of Beckmann et al. (US 6675388 B1) in further view of Itoh et al. (US 2004/0068737 A1) in further view of Harger et al. (US 4566034).

As to claim 5, Arad, Beckmann, and Itoh (as combined for claim 4) disclose the method of claim 4; however, a channel change is not taught.

Harger, who discloses a remote control, does teach by the remote control, a channel up signal; and changing the television to an adjacent cable channel one above the cable channel with the remote control (see Harger, col. 2, ll. 59-67, note CU and col. 11, ll. 9-20 where skip list includes all available channels (see Harger, col. 14, ll. 1-15), figs. 2 and 3A).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the method of Arad with the remote control channel changing functionality of Harger in order to automate the remote channel changing function (see Harger, col. 2, ll. 39-49).

As to claim 6, Arad, Beckmann, and Itoh (as combined for claim 4) disclose the method of claim 4, and Harger teaches the method further comprising: receiving, by the remote control, a channel down signal; and changing the television to an adjacent cable channel one below the cable channel with the remote control (see Harger, col. 2, ll. 59-67, note CD and col. 11, ll. 9-20 where skip list includes all available channels (see Harger, col. 14, ll. 1-15)).

As to claims 2, 8, 11, 14, 17, they are similar to claim 5 and therefore are analyzed similarly to claim 5 (see above).

As to claims 3, 9, 12, 15, 18, they are similar to claim 6 and therefore are analyzed similarly to claim 6 (see above).

6. Claims 2-3, 5-6, 8-9, 11-12, 14-15, 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arad et al. (US 2005/0081245 A1) in view of Beckmann et al. (US 6675388 B1) in further view of Itoh et al. (US 2004/0068737 A1) in further view of Pauley (US 5900916).

As to claim 5, Arad, Beckmann, and Itoh (as combined for claim 4) disclose the method of claim 4; however, a channel change is not taught.

Pauley, who discloses a remote control, does teach by the remote control, a channel up signal; and changing the television to an adjacent cable channel one above the cable channel with the remote control (see Pauley, col. 3, ll. 30-50, and col. 5, ll. 55-60 for "remote control" unit).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the method of Arad with the remote control channel changing functionality of Pauley in order to automate the remote channel changing function (see Pauley, col. 3, ll. 30-40).

As to claim 6, Arad, Beckmann, and Itoh (as combined for claim 4) disclose the method of claim 4, and Pauley teaches the method further comprising: receiving, by the remote control, a channel down signal; and changing the television to an adjacent cable channel one below the cable channel with the remote control (see Pauley, col. 3, ll. 30-50, and col. 5, ll. 55-60 for "remote control" unit).

As to claims 2, 8, 11, 14, 17, they are similar to claim 5 and therefore are analyzed similarly to claim 5 (see above).

As to claims 3, 9, 12, 15, 18, they are similar to claim 6 and therefore are analyzed similarly to claim 6 (see above).

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. With respect to the amended claim language of independent claims 1, 4, 7, 10, 13, 16 (automatically changing the television to the cable channel to satisfy expectations of a user when the tuner is not available for the television). Levine (US 5 297204), who discloses determining a channel tuned, does teach this (see Levine, col. 5, ll. 20-45, a microprocessor within the VCR tunes the cable channel of choice (by powering on and tuning cable channel within cable box) all this is accomplished when the cable box tuner is not available (due to being powered down, for example). This satisfies user expectations (of recording a pre-programmed show) with the cable box tuner being powered down). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the system of Arad and Beckmann with the system of Levine, in order to change the television to an expected cable channel without undue

interference on the user's part, allowing user to enjoy the automation the system contains and eliminating a need to control separately each tuner (see Levine, col. 2, ll. 52-60).

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Inquiries

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul J. Graham whose telephone number is 571-270-1705. The examiner can normally be reached on Monday-Friday 8:00a-5:00p EST.
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivek Srivastava can be reached on 571-272-7304. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

pjg
5/18/08

/Vivek Srivastava/

Supervisory Patent Examiner, Art Unit 2623